

OPEN MEETING AGENDA ITEM



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ORIGINAL

MEMORANDUM

30A

TO: Docket Control

FROM: Ernest G. *EGJ* Johnson
Director
Utilities Division

DATE: October 24, 2005

RE: VIRGIN MOUNTAIN UTILITIES COMPANY – APPLICATION AN
EXTENSION OF ITS CERTIFICATE OF CONVENIENCE AND NECESSITY
("CC&N") TO PROVIDE WATER SERVICE IN MOHAVE COUNTY,
ARIZONA (DOCKET NO. W-03551A-04-0325)

Attached is the Amended Staff Report for the above referenced application required by
Procedural Order dated August 24, 2005.

EGJ:LAJ:red

Originator: Linda A. Jaress

Attachment: Original and Thirteen Copies

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Docket No. W-03551A-04-0325

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AMENDED STAFF REPORT
UTILITIES DIVISION
ARIZONA CORPORATION COMMISSION

VIRGIN MOUNTAIN UTILITIES COMPANY

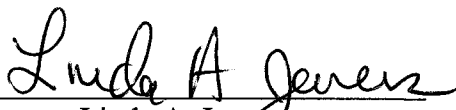
DOCKET NO. W-03551A-04-0325

APPLICATION FOR AN EXTENSION OF ITS CC&N
TO PROVIDE WATER SERVICE IN MOHAVE COUNTY, ARIZONA


OCTOBER 2005

STAFF ACKNOWLEDGEMENT

The Staff Report for Virgin Mountain Utilities Company, Inc. (Docket No. W-03551A-04-0325) was the responsibility of the Staff members listed below. Linda Jaress was responsible for the review and analyses of the Company's application. Dorothy M. Hains was responsible for the engineering and technical analysis.



Linda A. Jaress
Executive Consultant III



Dorothy M. Hains
Utilities Engineer

**EXECUTIVE SUMMARY
VIRGIN MOUNTAIN UTILITIES COMPANY
DOCKET NO. W-03551A-04-0325**

On April 29, 2004, Virgin Mountain Utilities Company ("Virgin Mountain" or "Company"), a certificated Arizona public service corporation, filed an application with the Arizona Corporation Commission ("ACC" or "Commission") requesting approval for an extension of its existing Certificate of Convenience and Necessity, ("CC&N") to include additional property in Mohave County, Arizona.

Virgin Mountain is authorized by the ACC in Decision No. 61525, dated February 19, 1999, to provide water service to a portion of Mohave County. The Company currently has no customers.

Staff's recommendation in the original Staff Report and at the hearing was that the Commission deny the application. Considering the installation of plant, the likely provision of sewer service in the Company's current CC&N area and the filing of requests for service to over 100 lots, Staff is now recommending an order preliminary to granting a CC&N. Staff continues to recommend denial of a hook-up fee.

The following are the remainder of Staff's recommendations:

1. Virgin Mountain be authorized an Order Preliminary to a CC&N.
2. Virgin Mountain be required to demonstrate that it has an adequate water supply. This demonstration shall be accomplished by submitting to Docket Control either an Arizona Department of Water Resources ("ADWR") Letter of Adequacy or an ADWR Physical Availability Demonstration for the extension area.
3. Virgin Mountain be required to submit to Docket Control an Arizona Department of Environmental Quality Approval to Construct the water system (production, storage and distribution facilities) to begin service to the extension area.
4. Virgin Mountain be required to comply with alternative recommendations 2 and 3 above within two (2) years from the date of this order with no time extensions allowed.
5. Upon Virgin Mountain complying with conditions 2, 3, and 4 above, Virgin Mountain shall file a motion to appear before the Commission at an Open Meeting to have the Commission grant Virgin Mountain the CC&N for the extension area.
6. In the event Virgin Mountain fails to meet conditions 2, 3, and 4 above, Virgin Mountain be required to submit a new application to provide service to the extension area if it still desires to pursue such authority.

7. Virgin Mountain should be required to obtain a bond that meets the requirements of Decision No. 61525 by August 3, 2006.

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Background

On April 29, 2004, Virgin Mountain Utilities Company ("Virgin Mountain" or "Company"), a certificated Arizona public service corporation, filed an application with the Arizona Corporation Commission ("ACC" or "Commission") requesting approval for an extension of its existing Certificate of Convenience and Necessity, ("CC&N") to include additional property in Mohave County, Arizona. Virgin Mountain is also requesting authority to charge a Hook-Up Fee.

The Company is an Arizona corporation, authorized by the ACC in Decision No. 61525, dated February 19, 1999, to provide water service to a portion of Mohave County. The Company currently has no customers. It requested and received numerous extensions of time to comply with the Commission's Decision. However, over six years after the Decision, Virgin Mountain still does not have a distribution system and, thus, does not provide service.

Staff filed a Staff Report on this matter on March 16, 2005, recommending denial and the evidentiary hearing was conducted on April 26, 2005. On April 29, 2005, a Procedural Order was issued requiring Staff to file additional, alternative recommendations to the recommendations supported by the Staff Report and evidence at the hearing. Staff filed the required alternative recommendations on May 27, 2005. This matter came before the Commission on the July 11, 2005 Open Meeting, where the Commission returned the case to the Hearing Division to review additional evidence.

Another Procedural Order was issued on August 24, 2005, requiring further filings by Virgin Mountain and Staff. Virgin Mountain was ordered to file "any new additional evidence and/or documentation which it intends to present at the hearing in further support of its application." Staff was ordered to "file a response and/or Amended Staff Report not later than 30 days after the filing by Virgin Mountain Utilities." On September 23, 2005, Virgin Mountain filed "additional support" for its application. This Amended Staff Report addresses the additional support filed by Virgin Mountain.

Staff Response to the Company's September 23, 2005 Filing

The Company's September 23rd filing included a Certificate of Approval to Construct for a New Source Well, Storage Tanks and Pressure System, dated March 29, 2005, from the Arizona Department of Environmental Quality ("ADEQ") for a well, two 28,000 gallon storage tanks, and twelve 110 gallons of hydropneumatic tanks. The Company also filed a Certificate of Completion and Final Inspection for a well, two 28,000 gallon storage tanks and 2 multi-stage pumps. These approvals are for the backbone plant and do not apply to mains and other distribution plant. Staff believes that an order approving this "extension" include a compliance requirement that the Company file an Approval to Construct its distribution plant within the extension area within 365 days of the decision in this case.

Copies of signed requests for service for over 100 lots were also included in the filing in a form that was more appropriate and specific than the previous form filed by the Company. These documents specifically request that the Company provide water service to identified lots. Staff believes these requests are numerous enough and located in areas across Section 15 to support a CC&N extension to the entire Section 15 if the Commission approves the extension.

Finally, the September 23rd filing included a copy of a Bond for Utility Users for \$10,000, guaranteeing "that the company shall return any customer deposits upon termination of business by the afore stated principal." According to Decision No. 61525 dated February 19, 1999, the Company was required to file, at least fifteen days before it first provides service to any customer, a:

"...performance bond in the amount of \$10,000...with the Commission to insure that Virgin Mountain Utilities Company shall meet its obligations arising under its Certificate....and that the performance bond shall be maintained until Virgin Mountain Utilities Company achieves viable operations, is sold to another utility company, is adjudicated not to be a public service company, or ten years have passed, whichever is sooner...."

Staff does not believe the bond supplied fulfills the bonding requirement in the Decision. The bond supplied appears to apply only to unrefunded customer deposits rather than to meeting any operating obligations. Staff recommends that regardless of the Decision in this case, that the Company comply with the bonding requirement as set forth in Decision No. 61525. This should be accomplished by August 3, 2006, which is the date of renewal of the current bond.

Sunrise Utilities, LLC and Beaver Dam Water Company

On October 18, 2005, the Commission granted a CC&N to Sunrise Utilities, LLC ("Sunrise") which will be providing sewer service within Virgin Mountain's original CC&N area. This could contribute to the viability of Virgin Mountain because new development is more likely when both water and sewer service are available. However, the sewer CC&N for Sunrise does not include the area for which Virgin Mountain is requesting an extension. According to the transcripts of the hearing, the extension area, which was subdivided before a new Mohave County prohibition against installation of septic tanks, is not subject to that prohibition. Therefore, there is less need for a central sewer service within the extension area.

As mentioned in the original Staff Report and the transcripts of the hearing, Beaver Dam Water Company is in the vicinity of the extension area, serves approximately 186 meters, is in substantial compliance with the Commission and would be the logical provider. However, Beaver Dam has not applied to serve the area.

Conclusions and Recommendations

Staff believes that with the ability of customers to access a sewer system in Virgin Mountain's original certificated area along with the completed construction of back-bone plant and the bone fide requests for service for over 100 lots, that the likelihood of development is greater than it has been in the past. However, Virgin Mountain has, in effect, locked up service territory for over six years without providing service. Staff believes that a less traditional treatment of this application is in order.

Staff, therefore recommends that the Commission issue an order preliminary in this case. This may facilitate Virgin Mountain's receipt of various approvals and allow the Company to progress toward operating.

Staff continues to recommend denial of a hook-up fee. The Commission's long-held policy is to deny hook-up fees for new utilities to help insure that the owners have a substantial investment in their company which they would logically protect through appropriate operation and maintenance practices. Through the combination of the requested hook-up fee and main extension agreements, the owners of Virgin Mountain may not have a substantial, long-term investment in their company. Also, one of the purposes of a hook-up fee is to protect current customers from the costs of growth and to place the cost of growth on the cost causers. In this instance, there are no current customers.

In conclusion, Staff now recommends:

1. Virgin Mountain be authorized an Order Preliminary to a CC&N.
2. Virgin Mountain be required to demonstrate that it has an adequate water supply. This demonstration shall be accomplished by submitting to Docket Control either an Arizona Department of Water Resources ("ADWR") Letter of Adequacy or an ADWR Physical Availability Demonstration for the extension area.
3. Virgin Mountain be required to submit to Docket Control an Arizona Department of Environmental Quality Approval to Construct the water system (production, storage and distribution facilities) to begin service to the extension area.
4. Virgin Mountain be required to comply with alternative recommendations 2 and 3 above within two (2) years from the date of this order with no time extensions allowed.
5. Upon Virgin Mountain complying with conditions 2, 3, and 4 above, Virgin Mountain shall file a motion to appear before the Commission at an Open Meeting to have the Commission grant Virgin Mountain the CC&N for the extension area.

6. In the event Virgin Mountain fails to meet conditions 2, 3, and 4 above, Virgin Mountain be required to submit a new application to provide service to the extension area if it still desires to pursue such authority.
7. Virgin Mountain should be required to obtain a bond that meets the requirements of Decision No. 61525 by August 3, 2006.